

### **Procedural History**

Defendant, Giuseppe Tedesco was convicted by a Sussex County

jury on January 10, 2013 for the murder of 22 year old Alyssa Ruggieri. He was also found guilty of the two second degree charges of Unlawful Possession of a Weapon and Possession of a Weapon for Unlawful Purpose.

On February 12, 2013 defense counsel submitted a writing signed by defendant expressing his desire to waive his appearance at sentencing. (Sa22-23). On February 25, 2013 Richard Pompelio, Esq. filed a motion and certification on behalf of Alyssa's mother, Michele Ruggieri, to compel the defendant's appearance at his sentencing. (Sa24-27). By way of letter dated March 8, 2013 the State joined in that motion. (Sa29). Defendant waived his appearance for that hearing and the matter was heard on March 13, 2013 resulting in the court's ruling that defendant was compelled to appear at his sentencing. (Sa56).

Defendant filed a notice of emergent appeal to the Appellate Division. On March 18, 2013, the Appellate Division granted defendant's application to hear the matter on an emergent basis and for leave to appeal the trial court's order compelling him to be present at his sentence. The Appellate

Division affirmed the holding of the trial court compelling defendant's presence.

(Sa62-66).

On March 19, 2013, the New Jersey Supreme Court granted the defendant's motion for leave to appeal and for a stay of the sentencing. (Sa74).

### **Statement of Facts**

The testimony at trial showed that on the evening of March 27, 2010 defendant drove to Alyssa Ruggieri's family home in Hopatcong, New Jersey, parked his car two blocks away, entered her home and shot her six times in the head, torso and hand, killing her.

Defendant then fled after leaving the victim alone and dead in the foyer of her home. During his attack on Alyssa, defendant accidentally shot himself in the hand requiring him to seek minimal treatment at a nearby hospital. He did not report the incident to anyone.

The witnesses for the State produced testimonial and physical evidence indicating that defendant had told friends he could not live without the victim and that he would kill her or any other man she was dating. It also showed he had slashed her tires the Tuesday and Friday nights before the Saturday he

murdered her. Immediately before the murder, defendant texted Alyssa requesting she spend his birthday with him. She responded "no" which the State argued triggered his decision to go kill her.

The medical examiner's testimony graphically described the six wounds Alyssa had received. Each of the five shots to her torso and head would have killed her almost instantly. The forensic evidence and placement of her body in the foyer of her family home lead to the conclusion that he shot her once upstairs in her kitchen through her right hand as she attempted to block or grab the gun from him. He then shot her in the abdomen and chest as she tried to escape down the adjacent stairs leading to her front door. As she lay on the ground, he stood over her and shot her three more times in the nose the temple and the chin. Somewhere in the struggle he shot himself through his left hand.

Defendant testified that when his gun fell on the victim's couch, she held it in her hand to give it to him and it accidentally fired into the palm of her hand when he went to retrieve it from her. He further testified that he and the victim fell down the stairs and two more shots went off but he had no explanation as to how because his eyes were closed.

Defendant also testified that Alyssa sat up in the foyer (after suffering a paralyzing shot through her spinal cord) and pointed the gun at him. He stated that he then grabbed it from her and turned the gun towards her face. She then pulled the trigger shooting herself two times in the chin and nose. He then wrestled the gun from the victim but fell hitting his arm against a stair causing it to accidentally fire into her temple.

After the forelady of the jury read the guilty verdict on all three charges (Sa4), the trial court polled the jurors. As each of the jurors responded to the court, law enforcement officers observed Tedesco mouthing an epithet to each individual juror. Defendant, who was handcuffed but not shackled, then stood up from his chair and moved towards the gallery in the direction of the victim's family and yelled, "You're next Devon Ruggieri Mother Fucker" referring to Alyssa's brother. A scuffle ensued as defendant was restrained and a sheriff's officer suffered a fractured ankle and other less serious injuries. (Sa11-16). As a result of this conduct, defendant was charged with violations of N.J.S.A. 2C: 12-3, Terroristic Threats, N.J.S.A. 2C: 12-1b5a, Aggravated Assault and N.J.S.A. 2C: 29-1 Obstruction.

#### **Point 1**

**The Trial Court did not err in ruling that the mother of a murder victim has standing to file a motion to compel the defendant's presence at sentencing under the authority of N. J. Const. Art. 1, ¶ 22 and N.J.S.A. 52:4B-36.**

The rights of crime victims in the state of New Jersey are conferred by the New Jersey Constitution, N. J. Const. Art. 1, ¶ 22 (hereinafter the "Victim's Rights Amendment") and N.J.S.A. 52:4B-36 (hereinafter, the "Crime Victims' Bill of Rights").

The Victim's Rights Amendment provides that victims shall have the right to be treated with fairness, compassion and respect, and to be present at all public judicial proceedings, N. J. Const. Art. 1, ¶ 22. The Crime Victims' Bill of Rights states that victims shall be treated with compassion and dignity and be entitled to certain other specifically enumerated rights, including that of standing in criminal cases on matters implicating their rights as victims, N.J.S.A. 52:4B-36 (1)(r).

On October 6, 2012, the amended Crime Victims' Bill of Rights took effect in New Jersey.<sup>1</sup> This legislation, which passed the Senate by a vote of 40 to 0 and the General Assembly by a vote of 78 to 0, was intended to codify existing practices and also expand the rights of crime victims in the criminal justice system. One of the newly enacted provisions, subsection

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<sup>1</sup> It has been named "Alex DeCroce's Law" in honor of the State legislator who introduced this bill into the legislature and the concurrent resolution ACR85 that lead to the adoption of the Victim's Rights Constitutional Amendment in 1991.

(1)(r) confirmed the prevailing practice of the courts of providing victims the right to be heard by stating that victims have standing to seek relief before the courts in this state. N.J.S.A. 52:4B-36 (1) (r) provides that a victim of crime shall have the right:

To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by Article I, paragraph 22 of the New Jersey Constitution, and to receive an adjudicative decision by the court on any such motion.

In his argument to the trial court and to the Appellate Division, defendant objected to the standing of the victim's mother, Michele Ruggieri to file a motion with the trial court to compel defendant's presence at sentencing. Defendant argued that while the statute does provide a victim with standing to file motions, it is inapplicable to the case at bar because the victim's mother is not asserting a right "conferred herein." Id.

The trial court and the Appellate Division determined that defendant's argument lacked merit recognizing that the rights conferred on victims by the Victim's Rights Amendment and Crime Victims' Bill of Rights include the right to be treated with 'fairness, compassion and respect", N. J. Const. Art. 1, ¶ 22; to be treated with "compassion and dignity", N.J.S.A. 52:4B-36;

and "To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime." N.J.S.A. 52:4B-36(n). The trial court reasoned:

If read for its plain meaning, the Victim's Bill of Rights would give a victim standing to file and argue a motion enforcing the right to be treated with dignity - dignity, compassion and respect by the Court system. Because Mrs. Ruggieri essentially argues that the Court's acceptance of defendant's waiver would deny her the compassion, respect, which she is entitled, she implicates the automatic standing rule of the Victim's Bill of Rights and should be allowed to have this motion adjudicated in this Court. (Sa41, 5-15).

The trial court referred to State in the Interest of K.P., 311 N.J. Super. 123, 709 A.2d 315 (Ch. Div. 1997) on the issue of victim standing. For well over a decade, the trial courts of New Jersey have relied on the court's decision in K.P. to uphold the right of the victim to file a motion and be heard on issues implicating the rights of the victim conferred by the Victim's Rights Amendment and the Crime Victims' Bill of Rights.<sup>2</sup> The court in K.P. reasoned:

It is difficult for the court to imagine that the Legislature intended to give victims these expansive rights, yet

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<sup>2</sup> Victim's counsel, the New Jersey Crime Victims' Law Center has represented numerous crime victims in the courts throughout this state where the standing of the victim to file a motion and be heard has been recognized.

The "Victims' Rights Amendment (N. J. Const. Art. 1, ¶ 22) defines "Victim to include the "parents" of a homicide victim and the Crime Victims' Bill of Rights N.J.S.A. 52:4B-37 provides: "'Victim' also includes the nearest relative of the victim of a criminal homicide."

specifically intended that they should not be a factor for a court to consider when there is compelling evidence that a detrimental effect upon a victim will occur if the court ignored their request. The State contends that the Legislature specifically identified victims to be considered an interested party with standing to open a proceeding, and, therefore, the court should determine that the ability to open suggests standing to close. The court agrees. The court finds that the legislative intent is more in line with considering the victim's position as opposed to ignoring it. The court finds a victim is a constructive equivalent to a party in the case.

K.P., supra, 311 N.J. Super. 123, 134, 709 A.2d 320.

While many of the rights of crime victims are participatory in practice, they are substantive in nature. These rights are civil rights and status rights automatically provided to persons when they assume the legal role of "victim." Victims' rights exist independent of the facts of the alleged crime or any defense asserted and regardless of the defendant's conviction. See Douglas E. Beloof, Constitutional Implications of Crime Victims as Participants, 88 CORNELL L. REV. 282, 286 (2003).

The right of a crime victim to be treated with fairness, compassion, respect and dignity under the Victim's Rights Amendment and Crime Victims' Bill of Rights has been well recognized by the courts of this state. See, e.g., State v. Muhammad, 145 N.J. 23, 678 A.2d 164 (1996); State v.



Timmendequas, 161 N.J. 515, 737 A.2d 55, (1999); and State v. Gilchrist, 381 N.J. Super. 147, 885 A.2d 35 (App. Div. 2005).

These rights, along with the other enumerated rights in the Victims' Rights Amendment and the Crime Victims' Bill of Rights belong to the survivors of Alyssa Ruggieri, including her mother, Michele Ruggieri.<sup>3</sup> As such, her "standing to file a motion and present argument on a motion filed to enforce any right conferred herein or by Article I, paragraph 22 of the New Jersey Constitution, and to receive an adjudicative decision by the court on any such motion." is explicit. N.J.S.A.52:4B-36(1)(r). This standing was properly recognized by both the trial court and the Appellate Division.

## **Point 2**

**The lower courts did not err in ruling that defendant is compelled to be present at the time he is sentenced.**

**A. The rights of the victim require that defendant be present at his sentencing.**

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<sup>3</sup> The "Victims' Rights Amendment (N. J. Const. Art. 1, ¶ 22) defines "Victim to include the "parents" of a homicide victim and the Crime Victims' Bill of Rights N.J.S.A. 52:4B-37 provides: "'Victim' also includes the nearest relative of the victim of a criminal homicide."

**1. The victims' rights to be treated with fairness, compassion and respect are constitutionally protected.**

Michele Ruggieri and each of the survivors of Alyssa Ruggieri are "victims" under the law and each are entitled to the constitutional protections of the Victim's Rights Amendment and the Crime Victims' Bill of Rights.<sup>4</sup> Accordingly, the Court must balance these rights against the desire or wish of the defendant to forego having to appear at his sentencing.

Since the adoption of the Victim's Rights Amendment in 1991, the state of New Jersey has made many significant advances in the rights of crime victims. The impact of the Victim's Right Amendment was first recognized by the New Jersey Supreme Court in 1996 in Muhammad supra, 145 N.J. 23, 678 A.2d 164, where the Court addressed the constitutionality of the death penalty victim impact testimony statute, N.J.S.A. 2C:11-3. Writing for the majority, Justice Garibaldi spoke of the intent of the Amendment and the strong public policy on which it rests.

Unlike most interpretations of constitutional provisions, we need not surmise what the founders intended when they drafted the Victim's Rights Amendment. We know exactly what the founders of this constitutional amendment intended-fair treatment for victims. To hold the victim impact statute unconstitutional would require us to ignore the Victim's Rights Amendment and the will of the

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<sup>4</sup> See note 3, supra at p. 7.

electorate that overwhelmingly approved the constitutional amendment. Over 1,200,000 citizens voted for the Victim's Rights Amendment while only 223,248 people voted against it. *Manual of New Jersey, Two Hundred and Fourth Legislature* (First Session) 1992, at 903. Beginning with the passage of the Criminal Injuries Compensation Act of 1971 (N.J.S.A. 52:4B-1 to -33), the people of New Jersey, speaking through the Legislature, have repeatedly expressed a very strong "public attitude" that victims should be provided with more rights.

Muhammad, supra, 145 N.J.42-43, 678 A.2d 164.

Two years after its decision in Muhammad, this Court again recognized the important public statement made by the Victim's Rights Amendment. In Timmendequas, supra, 161 N.J. 515, 737 A.2d 55, this Court addressed the issue of fairness, compassion and respect for crime victims in the context of a motion for change of venue in a death penalty case. The Court was faced with balancing the rights of the victim survivors of seven year old Megan Kanka against the claim by the defendant that keeping the case in Mercer County would violate his right to a fair trial. In upholding the claim of the victims that moving the trial to another county would violate their rights as crime victims, Justice Garibaldi, speaking for the Court, stated:

Defendant urges the Court to hold that the amendment merely allows victims to attend a trial and no more. Defendant views the Legislature's commitment to victim's rights too narrowly. Over the past decade, both

nationwide and in New Jersey, a significant amount of legislation has been passed implementing increased levels of protection for victims of crime. (Citations omitted) Specifically, in New Jersey, the Legislature enacted the "Crime Victim's Bill of Rights," N.J.S.A. 52:4B-34 to -38. Muhammad, supra, 145 N.J. at 33, 678 A.2d 164. That amendment marked the culmination of the Legislature's efforts to increase the participation of crime victims in the criminal justice system. Ibid. The purpose of the Victim's Rights Amendment was to "enhance and protect the necessary role of crime victims and witnesses in the criminal justice process. In furtherance of [that goal], the improved treatment of these persons should be assured through the establishment of specific rights."

. . . .

Considerations of "fairness" and "respect," supra, justify the trial court's decision to balance the very real harms the Kankas would suffer if venue were changed to Camden."

Taking the concerns of the victim's family into account does not constitute error, provided that the constitutional rights of the defendant are not denied or infringed on by that decision. As we find no infringement upon defendant's constitutional rights, we reject this argument. Id. at 555-56.

Id. at 555-56.

It has now been three years since defendant took the life of Alyssa Ruggieri. Throughout the many court appearances and weeks of trial, her loved ones were required to sit quietly and exercise considerable emotional restraint as the rights of

defendant were recognized and respected throughout the judicial process. Defendant received the fair trial to which he was entitled. It is now the time for the rights of the victims to be recognized. It is now time for defendant to sit and listen to the words of Alyssa's loved ones and to hear about the harm he has caused.

**2. The victims' have the right to meaningfully participate in the criminal justice process by giving a victim impact statement at sentencing.**

The right of a crime victim to give an in-person victim statement to the court at sentencing has much historical significance in New Jersey. In 1991, as the process of amending the state constitution was moving with full force through the state legislature, its members and members of the executive branch sought to make an immediate statement of support for the rights of victims by addressing the ongoing problem of victim exclusion. This occurred during the height of the national victims' rights movement which placed great importance in the findings of the President's Task Force report of 1982 (hereinafter "Task Force").<sup>5</sup> The Task Force concluded that the criminal justice system had "lost the balance that has been the cornerstone of its wisdom." Id. at 16. See discussion, Paul G.

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<sup>5</sup> PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT (1982).

Cassell, In Defense of Victim Impact Statements, 6 OHIO STATE JOURNAL OF CRIMINAL LAW 611, 620 (2009) [hereinafter "Cassell"].

As a result, N.J.S.A. 52:4B-36(n) was added to the Crime Victims' Bill of Rights giving to victims the right "[t]o make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime." The law also provided, "[t]his statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S.A. 2C:44-6." To be assured that these rights would be routinely exercised by crime victims, the law further required each county prosecutor's office to notify victims of the right to make the in-person statement to the sentencing court concerning the impact of the crime. N.J.S.A. 52:4B-36(n); N.J.S.A. 52:4B-44 (Attorney General's Standards to Ensure the Rights of Crime Victims).

The purpose of the victim impact statement at sentencing is to afford to the victim and/or the victim's survivors the one and only opportunity throughout the entire judicial process to confront the offender and to have a face and a voice in the process.<sup>6</sup> The opportunity to speak at sentencing in the presence

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<sup>6</sup> National Center for Victims of Crime, Victim Impact Statements, available at <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements>.

of the offender is viewed by victims' rights experts as empowering. Thus, it may be a step forward for victims in healing from the emotional wounds caused by the crime.

Victim impact statements serve four primary purposes:

1. They provide information to the sentence. The Task Force concluded that "[a] judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim."<sup>7</sup>
2. They contribute to the healing of the victim through empowerment and by enabling the victim "to regain a sense of dignity and respect rather than feeling powerless and ashamed."<sup>8</sup>
3. They help explain the crime's harm to the defendant. Even the critics of victim impact statements, have conceded that:

[V]ictim impact evidence lays out before the *offender* the precise nature of [his] act, ideally in such a way as to permit and encourage [him] to identify with the victim's suffering as person. In this way, victim impact evidence can help legitimize the process of [his] punishment in the eyes of the offender and perhaps even contribute to [his] recognition of [himself] as one

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<sup>7</sup> Cassell at 620, Task Force at 77-78.

<sup>8</sup> Kenna v. U.S. District Court for C.D. Cal., 435 F.3d 1011, 1016 (9<sup>th</sup> Cir. 2006); Cassell at 622.

person among others entitled to mutual respect and, in this sense, to [his] 'rehabilitation.'<sup>9</sup>

4. Victim Impact statements improve the perceived fairness of sentencing. Legislation that considers the importance of victim impact statements,

"recogniz[es] that the sentencing process cannot be reduced to a two-dimensional, prosecution versus defendant affair. Instead, [these laws treat] sentencing as involving a third dimension—fairness to victims—requiring that they be 'reasonably heard' at sentencing."

See, United States v. Degenhardt, 405 F. Supp. 2d 1341, 1347 (D. Utah 2005); Cassell at 624.

The significance of the victim impact process was recognized by the United States Supreme Court in Payne v. Tennessee, 111 S.Ct. 2597 (1991), where the Court reversed its prior decision in Booth v. Maryland, 107 S.Ct. 2529 (1987), ruling that victim impact testimony is permitted in death penalty cases.

By permitting the victim to have a voice, the Court likewise, recognized that victims have considerable importance

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<sup>9</sup> MARKUS DIRK DUBBER, VICTIMS IN THE WAR ON CRIME: THE USE AND ABUSE OF VICTIMS' RIGHTS 336 (2002); Cassell at 623.



in the judicial process. In his concurring opinion, Justice Souter described the magnitude of damage a killer can cause and the need for the justice system and the killer to understand this damage when attempting to practically assess the rights of both the offender and the victim.

"Every defendant knows, if endowed with the mental competence for criminal responsibility, that the life he will take by his homicidal behavior is that of a unique person, like himself, and that the person to be killed probably has close associates, "survivors," who will suffer harms and deprivations from the victim's death. Just as defendants know that they are not faceless human ciphers, they know that their victims are not valueless fungibles, and just as defendants appreciate the web of relationships and dependencies in which they live, they know that their victims are not human islands, but individuals with parents or children, spouses or friends or dependents. Thus, when a defendant chooses to kill, or to raise the risk of a victim's death, this choice necessarily relates to a whole human being and threatens an association of others, who may be distinctly hurt."

Id., at 2615-2616. (Souter, J., Kennedy, J. concurring).

The right to deliver an in-person victim impact statement at the time of sentencing is the first and oftentimes the only opportunity in the judicial process that a survivor of homicide has to bring the face and the voice of their loved one into the process. The certification of Michele Ruggieri that accompanied her motion to the trial court reflects the importance of having her daughter's killer present when she delivers her impact

statement at his sentencing.

(Par. 6) Facing Alyssa's loved ones is part of Tedesco's justice as it is the essence of our need and desire to obtain justice for Alyssa. As painful as it is to see Tedesco one more time, I know that I and Alyssa's loved ones must do this. Our victim impact statements will be meaningless if the individual who thrust all of us into this terrible nightmare can simply turn his back to us and to this Court and dismiss us as if we have no meaning in the process of justice.  
(Sa76-77).

The right of the victim to deliver a victim impact statement in open court is perhaps the single most important right of a crime victim under the Crime Victims Bill of Rights. N.J.S.A. 52:4B-36 (n). No one can better represent the murder victim at the sentencing proceeding than that individual's loved one. The inclusion of the victim in the justice process is constitutionally mandated and morally necessary as further indicated by the words of Alyssa's mother,

(Par. 7) The defendant will be sentenced almost three years from the date he murdered my daughter. I cannot describe the pain and anguish we have suffered but I do know that in every fiber of my being, I need him to be present to see and to hear about the pain that he has caused to all of us. We need to say, and he needs to hear, that he can no longer control anyone or anything. He took my daughter's life when I was not there to protect her. We had to sit quietly and respectfully in court for the past three years as Tedesco was afforded justice. We could not say or do anything that might impact his right to receive justice. But now it is time for us to speak, and as painful as it will be for me and for other members of our family we will speak about how the joy of our life was violently snatched from us. And our child, all

those who knew her and the process of justice demand that the evildoer who caused this unfathomable harm likewise be present.  
(Sa77).

**3. Defendant has no constitutionally protected right to be absent from his sentencing.**

Defendant has a federal and state constitutional due process right to be present at his sentencing. He does not; however, have the right to be absent from the proceeding. The argument of defendant in the case at bar is not based on any right he may possess under the Federal or State Constitution, or any other legal authority. His desire to be absent from his sentencing is no more than a preference on his part. Defendant has no right to refuse to be present during the sentencing proceedings nor does he have any protectable interest that is to be recognized by the court in justifying his claim. The Appellate Division noted this fact in referring to defendant's claim as "whatever the nature of the interest being advanced in allowing defendant to waive his presence, Rule 3:21-4(b) . . ."  
(Sa65).

The reasons given by defendant's counsel for his client's desire to be absent from his sentencing were presented to the trial court and to the Appellate Division. The trial court rejected defendant's argument that it would not be practical to

have him appear at his sentencing because of his disruptive conduct at the time of the jury verdict. The court commented, "Let this Court be perfectly clear, under no circumstances will the Court's decision be governed by an unruly defendant or by one who threatens such conduct." (Sa46). In his appeal to the Appellate Division, defendant's written response to Question #12 of the application that asked, "What is the nature of the emergency", defendant responded, "Defendant is scheduled to be sentenced on March 20, 2013." The answer as to why the defendant's sentencing was an emergency for him was presented in his response to Question #13 when he was asked, "What is the irreparable harm, and when do you expect this harm to occur?" The response of the defendant, through his legal counsel, stated that by being "physically compelled to appear at sentencing", his presence at sentencing,

(1)"has the potential to put a variety of people in danger"; (2)"cause the Defendant to be moved from Trenton to Newton against his will." (Sa60).

The Appellate Division issued a similar response as the trial judge noting that "[T]he only risk of harm arises from defendant's own actions . . . ." (Sa66) and,

[D]efendant may not use the waiver process to diminish

in any way the victim's well-recognized right to meaningfully participate in the criminal justice system or render the exercise of that right any less complete or effective than contemplated by our constitution and implementing legislation. (Sa66).

Rule. 3:21-4(b), on which defendant relies as the sole authority for a waiver of appearance, provides a procedural instruction if the court grants a waiver. It does not grant to the convicted offender the absolute right to waive his appearance.

The court rule fully recognizes the defendant's right of allocution. To deny the defendant his right of allocution in the case *sub judice*, where he is facing the most serious form of punishment other than death may constitute a denial of his rights to procedural due process under the Federal and State Constitutions. See State v. Marnin, 108 N.J.Super. 442, 445 (App. Div. 1970).

The defendant's right of allocution is a "personal" right, and the court must make inquiry of the defendant directly and personally in order to safeguard this right. Statements by defendant's counsel concerning what he discussed with the defendant before the proceedings are insufficient. See generally, State v. Bey, 161 N.J. 233, 275-277 (1999) and State v. Cerce, 46 N.J. 387 (1966). The trial court should engage in

a colloquy with the defendant to apprise him of his right of allocution. Bey, supra, 161 N.J. 233, 275.

Furthermore, the only reasonable interpretation of R. 3:21-4 is the one given to it by the trial and appellate courts. There may be instances where justice requires that a criminal defendant may be permitted to waive his presence at court proceeding. See, e.g.; State v. Morton, 155 N.J. 383, 453, 715 A.2d 228 (1998), cert. denied, [532 U.S. 931](#), [121 S. Ct. 1380](#), [149 L. Ed. 2d 306 \(2001\)](#).

While the defendant may desire to refrain from being present during these proceedings, his desire is subordinate under the law to the rights of the crime victims and the duty of the court to protect his right to due process of law. Defendant will suffer no impairment of any defined constitutional or statutory right if the court compels his attendance at the sentencing proceedings. However, the rights of the victims will not be so safeguarded if he is allowed to arbitrarily victimize the family of Alyssa Ruggieri one more time.

**B. There is compelling societal interest that requires the appearance of defendant at his sentencing that outweighs his preference to be absent from the proceeding.**

**1. The decision to require defendant's presence at sentencing is within the sound discretion of the court.**

While he may seek to waive his appearance, the decision to grant or reject his request lies within the sound discretion of the court. The review of that decision by the appellate courts is "relatively narrow" and should not be overturned unless the lower court has acted in an arbitrary manner and abused its discretion. State v. Blackmon, 202 N.J. 283, 296, 997 A.2d 194 (2010); State v. Jarbath, [114 N.J. 394, 401, 555 A.2d 559 \(1989\)](#). In conducting the review of any sentence, appellate courts always consider whether the trial court has made findings of fact that are grounded in competent, reasonably credible evidence and whether "the factfinder [has] appl[ied] correct legal principles in exercising its discretion." State v. Roth, 95 N.J. 334, 363, 471 A.2d 370 (1984); Blackmon, supra, 202 N.J. 283, 296, 997 A.2d 194. In Blackmon, the Court quoted from its decision in Roth:

Our traditional articulation of this standard uses language that limits a reviewing court's exercise of authority to those situations in which the application of the facts to the law has resulted in a clear error of judgment or a sentence that "shocks the judicial conscience.

Blackmon, supra, 202 N.J. 283, 297, 997 A.2d 194; Roth, supra, 95 N.J. 334, 363, 471 A.2d 370. See also, State v. O'Donnell, 117 N.J.210, 215-16, 564 A.2d 1202 (1989); N.J.S.A. 2C:44-6.

The Appellate Division, in the instant matter, reasoned, "[T]he sentencing judge, in whose discretion the decision

whether to allow defendant to waive his right to be present lies, R.3:21-4(b), is in the best position to decide issues of courtroom security and safety." (Sa66).

**2. There are compelling societal factors that require defendant's presence at sentencing.**

Defendant should be present at sentencing to face those he has wronged. United States v. Turner, 532 F. Supp. (N.D. Cal. 1981). Reasoning that justice encompasses logic, the court noted:

The state may have an interest in the presence of the defendant in order that the example of personal admonition might deter others from similar crimes. Moreover, it may sometimes be important that the convicted man be called to account publicly for what he has done, not to be made an instrument of the general deterrent, but to acknowledge symbolically his personal responsibility for his acts and to receive personally the official expression of society's condemnation of his conduct. The ceremonial rendering of judgment may also contribute to the individual deterrent force of the sentence if the latter is accompanied by appropriate judicial comment on the defendant's crime.

Id. at 915. See also, the trial court's reference to State v. Charles Cullen and State v. Rabbi Fred Newlander where the state trial courts set forth similar reasons for compelling each defendant to appear at his sentencing despite the fact that he waived his appearances before both courts. (Sa43-44).

The "[p]ronouncement of judgment of sentence is among the



most solemn and serious responsibilities of a trial court. No word formula will ever eliminate this requirement that justice be done." Roth, supra, 95 N.J. 334, 365, 471 A.2d 370; Blackmon, supra, 202 N.J. 283, 296, 997 A.2d 19.

The trial court in the case at bar referred to the "compelling [societal] interest that demands defendant's appearance . . ." (Sa47). Factors comprising this strong societal interest include public consternation and notoriety, crimes of egregious acts of violence and crimes adversely affecting the institutions of government (Sa47). Inherent in the effectiveness of our justice system is the respect for it that is possessed by each member of our society. Included in this respect, is recognition of the authority of our judicial system to administer the laws fairly and with justice for all who come under its protection. To permit defendant to effectively thumb his nose at the court, the victims and the members of our society, is no less than an abomination of all that our system of American justice represents.

The interpretive statement to the Victim's Rights Amendment reminds us that *it is designed to place victims on an equal footing with defendants by guaranteeing certain fundamental rights as a matter of State Constitutional imperative.* The passage of both the Victim's Rights Amendment and the Crime

Victims' Bill of Rights reflects a powerful statement by the people of this State that a crime victim is an integral part of the criminal justice process. As the rights of the defendant cannot be diminished; likewise, the rights of the victim must be given equal deference by the courts. This Court recognized this fact in Muhammad, referring to the words of Justice Pashman, who, as a trial judge, reasoned:

It must be remembered that the greatest danger to people from the exercise of the judicial power is that there may be a usurpation by the courts of the people's right to express in law, by overwhelming numbers of their elected legislators, their collective reasoning.

New Jersey Sports & Exposition Auth. v. McCrane, 119 N.J.Super. 457, 476 77, 292 A.2d 580 (Law Div.1971), aff'd as modified, 61 N.J. 1, 292 A.2d 545, appeal dismissed, 409 U.S. 943, 93 S.Ct. 270, 34 L.Ed.2d 215 (1972); Muhammad, supra, 145 N.J.42-43, 678 A.2d 164.

### **CONCLUSION**

Based on the foregoing it is respectfully requested that the relief requested by the defendant be denied.

Respectfully submitted,

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